



Reprinted  
February 4, 2004

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## SENATE JOINT RESOLUTION No. 5

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DIGEST OF SJ 5 (Updated February 3, 2004 2:40 pm - DI 75)

**Citations Affected:** Article 5 of the Constitution of the State of Indiana.

**Synopsis:** Exercise of the state's executive power. Provides for discharge of the governor's powers and duties if the governor dies, becomes disabled, resigns, or is removed from office. Provides for the discharge of the lieutenant governor's powers and duties if the lieutenant governor dies or is disabled. Provides for the discharge of the governor's powers and duties if neither the governor nor the lieutenant governor are able to discharge those powers and duties.

**Effective:** This proposed amendment must be agreed to by two consecutive general assemblies and ratified by a majority of the state's voters voting on the question to be effective.

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January 13, 2004, read first time and referred to Committee on Rules and Legislative Procedure.  
January 29, 2004, amended, reported favorably — Do Pass.  
February 3, 2004, read second time, amended, ordered engrossed.

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SJ 5 — SJ 9609/DI 75+



Reprinted  
February 4, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular General Assembly.

## SENATE JOINT RESOLUTION No. 5

A JOINT RESOLUTION proposing an amendment to Article 5 of the Constitution of the State of Indiana concerning the executive power of state government.

*Be it resolved by the General Assembly of the State of Indiana:*

- 1 SECTION 1. The following amendment to the Constitution of the
- 2 State of Indiana is proposed and agreed to by this, the One Hundred
- 3 Thirteenth General Assembly of the State of Indiana, and is referred to
- 4 the next General Assembly for reconsideration and agreement.
- 5 SECTION 2. THE CONSTITUTION OF THE STATE OF
- 6 INDIANA IS AMENDED BY STRIKING OUT ARTICLE 5,
- 7 SECTION 10.
- 8 SECTION 3. ARTICLE 5 OF THE CONSTITUTION OF THE
- 9 STATE OF INDIANA IS AMENDED BY ADDING A NEW
- 10 SECTION TO READ AS FOLLOWS: **Section 10.1. (a) If the**
- 11 **Governor-elect fails to assume office, the Lieutenant**
- 12 **Governor-elect becomes Governor and holds office for the term of**
- 13 **the Governor-elect.**

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(b) If the Governor dies, resigns, or is removed from office, the Lieutenant Governor becomes Governor by operation of law and holds office for the unexpired term of the immediately previous Governor. The oath of office taken by the Lieutenant Governor as Lieutenant Governor serves as the oath of office for the office of Governor.

(c) The General Assembly shall provide by law for the Lieutenant Governor to discharge the Governor's powers and duties as Acting Governor if:

(1) the Governor; or

(2) the president pro tempore of the senate and the speaker of the house of representatives;

determine that the Governor is unable to discharge the Governor's powers and duties.

(d) If the Lieutenant Governor dies, resigns, or is removed from office, the Governor shall nominate an individual to become Lieutenant Governor. The individual nominated by the Governor takes office upon confirmation by a majority vote in each house of the General Assembly and holds office for the unexpired term of the immediately previous Lieutenant Governor. If the General Assembly is not in session, the Governor shall call it into special session to receive and act upon the Governor's nomination.

(e) The General Assembly shall provide by law for an individual nominated by the Governor to discharge the Lieutenant Governor's powers and duties as Acting Lieutenant Governor if the Lieutenant Governor or the Governor determines that the Lieutenant Governor is unable to discharge the Lieutenant Governor's powers and duties.

(f) If both the offices of Governor and Lieutenant Governor are vacant, the General Assembly shall convene in joint session not later than forty-eight hours after the later vacancy occurs and elect a Governor from the same political party as the immediately previous Governor by a majority vote of each house. The General Assembly may provide by law for designated state officers (including officers of the General Assembly) to discharge the Governor's powers and duties as Acting Governor until the General Assembly elects a Governor under this subsection.

(g) If any of the following applies, the General Assembly shall convene in joint session not later than forty-eight hours after the later of the events described in subdivision (1), (2), or (3) occurs and select an Acting Governor from the same political party as the Governor by a majority vote of each house:

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(1) Both the Governor and Lieutenant Governor are unable to discharge the powers and duties of their respective offices.

(2) The office of Governor is vacant and the Lieutenant Governor is unable to discharge the powers and duties of the Lieutenant Governor.

(3) The Governor is unable to discharge the powers and duties of the Governor and the office of Lieutenant Governor is vacant.

The General Assembly may provide by law for designated state officers (including officers of the General Assembly) to discharge the Governor's powers and duties as Acting Governor until the General Assembly selects an Acting Governor under this subsection.

(h) An individual who serves as Acting Governor may exercise all the Governor's powers and duties. An individual who serves as Acting Governor surrenders the Governor's powers and duties when the earliest of the following occurs:

(1) The Governor's term of office expires.

(2) The Governor resumes the Governor's powers and duties.

(3) Another individual becomes Acting Governor.

(4) The individual is unable to discharge the Governor's powers and duties.

(i) An individual who serves as Acting Lieutenant Governor has all the Lieutenant Governor's powers and duties. An individual who serves as Acting Lieutenant Governor surrenders those powers and duties when the earliest of the following occurs:

(1) The Lieutenant Governor's term of office expires.

(2) The Lieutenant Governor resumes the Lieutenant Governor's powers and duties.

(3) Another individual becomes Acting Lieutenant Governor.

(4) The individual is unable to discharge the Lieutenant Governor's powers and duties.

(j) An individual who serves as Acting Governor by virtue of another office the individual holds does not forfeit the other office upon becoming Acting Governor. The individual may not discharge the powers and duties of the other office while serving as Acting Governor.

(k) If a question arises:

(1) under subsection (c) or (g) whether the Governor is able to discharge the Governor's powers and duties; or

(2) under subsection (g) whether the Lieutenant Governor is able to discharge the Lieutenant Governor's powers and

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duties;  
 the president pro tempore of the senate and the speaker of the  
 house of representative may jointly file a petition with the Supreme  
 Court. The Supreme Court shall meet not later than forty-eight  
 hours after the petition is filed and decide the question.

(l) If the Supreme Court determines that the Governor is unable  
 to discharge the Governor's powers and duties under subsection  
 (k), the Governor may subsequently file a petition with the  
 Supreme Court for a determination that the Governor is able to  
 discharge the Governor's powers and duties. If a petition is filed  
 under this subsection, the Supreme Court shall meet to decide the  
 question. A decision of the Supreme Court of a question under this  
 subsection is final.

(m) If the Supreme Court determines that the Lieutenant  
 Governor is unable to discharge the Lieutenant Governor's powers  
 and duties under subsection (k), the Lieutenant Governor may  
 subsequently file a petition with the Supreme Court for a  
 determination that the Lieutenant Governor is able to discharge  
 the Lieutenant Governor's powers and duties. If a petition is filed  
 under this subsection, the Supreme Court shall meet to decide the  
 question. A decision of the Supreme Court of a question under this  
 subsection is final.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Engrossed Senate Joint Resolution No. 5, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said joint resolution be AMENDED as follows:

Page 1, delete lines 8 through 13, begin a new paragraph and insert:

"SECTION 3. ARTICLE 5 OF THE CONSTITUTION OF THE STATE OF INDIANA IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS: **Section 10.1. (a) If the Governor-elect fails to assume office, the Lieutenant Governor-elect becomes Governor and holds office for the term of the Governor-elect.**

**(b) If the Governor dies, resigns, or is removed from office, the Lieutenant Governor becomes Governor by operation of law and holds office for the unexpired term of the immediately previous Governor. The oath of office taken by the Lieutenant Governor as Lieutenant Governor serves as the oath of office for the office of Governor.**

**(c) The General Assembly shall provide by law for the Lieutenant Governor to discharge the Governor's powers and duties as Acting Governor if the Governor or state officers (including officers of the General Assembly) designated by law determine that the Governor is unable to discharge the Governor's powers and duties.**

**(d) If the Lieutenant Governor dies, resigns, or is removed from office, the Governor shall nominate an individual to become Lieutenant Governor. The individual nominated by the Governor takes office upon confirmation by a majority vote in each house of the General Assembly and holds office for the unexpired term of the immediately previous Lieutenant Governor. If the General Assembly is not in session, the Governor shall call it into special session to receive and act upon the Governor's nomination.**

**(e) The General Assembly shall provide by law for an individual nominated by the Governor to discharge the Lieutenant Governor's powers and duties as Acting Lieutenant Governor if the Lieutenant Governor or the Governor determines that the Lieutenant Governor is unable to discharge the Lieutenant Governor's powers and duties.**

**(f) If both the offices of Governor and Lieutenant Governor are vacant, the General Assembly shall convene in joint session not later than forty-eight hours after the later vacancy occurs and elect**

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a Governor from the same political party as the immediately previous Governor by a majority vote of each house.

(g) If any of the following applies, the General Assembly shall convene in joint session not later than forty-eight hours after the latest event occurs and select an Acting Governor from the same political party as the Governor by a majority vote of each house:

- (1) Both the Governor and Lieutenant Governor are unable to discharge the powers and duties of their respective offices.
- (2) The office of Governor is vacant and the Lieutenant Governor is unable to discharge the powers and duties of the Lieutenant Governor.
- (3) The Governor is unable to discharge the powers and duties of the Governor and the office of Lieutenant Governor is vacant.

The General Assembly may provide by law for designated state officers (including officers of the General Assembly) to discharge the Governor's powers and duties as Acting Governor until the General Assembly selects an Acting Governor under this subsection.

(h) An individual who serves as Acting Governor may exercise all the Governor's powers and duties. An individual who serves as Acting Governor surrenders the Governor's powers and duties when the earliest of the following occurs:

- (1) The Governor's term of office expires.
- (2) The Governor resumes the Governor's powers and duties.
- (3) Another individual becomes Acting Governor.
- (4) The individual is unable to discharge the Governor's powers and duties.

(i) An individual who serves as Acting Lieutenant Governor has all the Lieutenant Governor's powers and duties. An individual who serves as Acting Lieutenant Governor surrenders those powers and duties when the earliest of the following occurs:

- (1) The Lieutenant Governor's term of office expires.
- (2) The Lieutenant Governor resumes the Lieutenant Governor's powers and duties.
- (3) Another individual becomes Acting Lieutenant Governor.
- (4) The individual is unable to discharge the Lieutenant Governor's powers and duties.

(j) An individual who serves as Acting Governor by virtue of another office the individual holds does not forfeit the other office upon becoming Acting Governor. The individual may not discharge the powers and duties of the other office while serving as

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Acting Governor.

(k) If a question arises whether an individual serving as Governor or Lieutenant Governor is able to discharge the powers and duties of an office, the Supreme Court shall decide the question. An individual serving as Governor or Lieutenant Governor who had been determined unable to discharge the powers and duties of an office may file a petition with the Supreme Court for a determination that the individual is able to discharge the powers and duties of the office. If a petition is filed under this subsection, the Supreme Court shall meet to decide the question under procedures provided by law. A decision of the Supreme Court of a question under this subsection is final."

Delete pages 2 through 7.

and when so amended that said bill do pass.

(Reference is to SJR 5 as introduced.)

GARTON, Chairperson

Committee Vote: Yeas 8, Nays 0.

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## SENATE MOTION

Madam President: I move that Senate Joint Resolution 5 be amended to read as follows:

Page 2, line 9, delete "if the Governor or state officers" and insert "if:

(1) the Governor; or

(2) the president pro tempore of the senate and the speaker of the house of representatives;".

Page 2, delete line 10.

Page 2, line 11, beginning with "determine" begin a new line blocked left.

Page 2, line 31, after "house." insert "**The General Assembly may provide by law for designated state officers (including officers of the General Assembly) to discharge the Governor's powers and duties as Acting Governor until the General Assembly elects a Governor under this subsection.**".

Page 2, line 34, delete "latest event" and insert "**the later of the events described in subdivision (1), (2), or (3)**".

Page 3, delete lines 31 through 41, begin a new paragraph and insert:

"(k) If a question arises:

(1) under subsection (c) or (g) whether the Governor is able to discharge the Governor's powers and duties; or

(2) under subsection (g) whether the Lieutenant Governor is able to discharge the Lieutenant Governor's powers and duties;

**the president pro tempore of the senate and the speaker of the house of representative may jointly file a petition with the Supreme Court. The Supreme Court shall meet not later than forty-eight hours after the petition is filed and decide the question.**

(l) If the Supreme Court determines that the Governor is unable to discharge the Governor's powers and duties under subsection (k), the Governor may subsequently file a petition with the Supreme Court for a determination that the Governor is able to discharge the Governor's powers and duties. If a petition is filed under this subsection, the Supreme Court shall meet to decide the question. A decision of the Supreme Court of a question under this subsection is final.

(m) If the Supreme Court determines that the Lieutenant Governor is unable to discharge the Lieutenant Governor's powers and duties under subsection (k), the Lieutenant Governor may subsequently file a petition with the Supreme Court for a

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**determination that the Lieutenant Governor is able to discharge the Lieutenant Governor's powers and duties. If a petition is filed under this subsection, the Supreme Court shall meet to decide the question. A decision of the Supreme Court of a question under this subsection is final."**

(Reference is to SJR 5 as printed January 30, 2004.)

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